

REMARKS

Responsive to the restriction requirement imposed in the outstanding Official Action, applicants elect group I, claims 1-7 and 9-14, drawn to a product/composition comprising a wetting agent or penetrating agent used in agriculture, and an oligopeptide, without traverse.

Responsive to the requirement to elect an oligopeptide, applicants provisionally elect, as offered in the outstanding Official Action, the two oligopeptides recited in claim 14, and separately claimed in claims 2 and 3, with traverse. Claims 1-7 and 9-14 are readable on these elected oligopeptides.

Responsive to the requirement to elect a particular wetting agent and penetrating agent, applicants provisionally elect soya lecithin, which is both a wetting agent and penetrating agent, with traverse. Claims 1-7 and 9-14 are readable on this elected agent.

Applicants understand that the election of the specific oligopeptides and the wetting/penetrating agent is for the purpose of searching the claimed invention. It is not the intention of the applicants to limit the scope of the claimed invention to the elected oligopeptides and the wetting/penetrating agent.

The reasons for traversing the requirement for electing specific oligopeptides, a wetting agent, and a penetrating agent follows:

The Official Action states that each composition, i.e. an elicitor, comprising a single oligopeptide, wetting agent, and penetrating agent is a distinct invention, and, thus, restriction to a single oligopeptide, wetting agent, and penetrating agent is required. However, applicants respectfully submit that the claimed elicitor works with all oligopeptides obtained by organic or enzymatic synthesis, that are homopolymers of amino-acids, wetting agents used in agriculture, and penetrating agents used in agriculture.

This restriction requirement is improper as a matter of law. The present application is a National Stage Application of PCT/FR03/01021. Pursuant to 37 CFR 1.499, unity of the invention is considered for a National Stage Application, as described by 37 CFR 1.475. Determination of the lack of unity is possible only when the claims of different inventions lack a "special technical feature" relative to one another. In the present case, as independent claim 1 is an elicitor composition generic to the dependent claims, all of the elicitor claims of Group I, by definition, share the same special technical features of claim 1.

The Examiner's attention is respectfully directed to PCT Rule 13.2 in Part 1b of the Annex B of the administrative instructions under the PCT, which specifies that "special technical features" are those features that define a contribution which each of the inventions, considered as a whole, makes over

the prior art. In other words, PCT Rule 13.2 is art-based and requires the citation of a publication showing the "special technical feature". Thus, absent any showing that an elicitor comprising the claimed oligopeptides, wetting agents, and penetrating agents is present in a prior art reference, no determination of lack of unity can properly be made.

Therefore, as the Official Action fails to provide such a citation, applicants believe that the restriction requirement to a single oligopeptide, wetting agent, and penetrating agent is improper as a matter of law.

Moreover, it is respectfully submitted that in applying this same legal standard with similar claims, the International Searching Authority did not determine the unity of invention as lacking with respect to elicitors of a single oligopeptide, wetting agent, and penetrating agent. Thus, the Patent Office has the benefit of the search report, but fails to explain why a different legal conclusion was reached.

Furthermore, the Patent Office has already determined that a search for the claimed invention is not a burden, as evidenced by the issuance of the first action on the merits mailed September 14, 2006 for which a search had been completed.

In view of the above discussion, applicants respectfully submit that the restriction to an elicitor of a single oligopeptide, wetting agent, and penetrating agent, as set


forth in the outstanding Official Action is improper and should be withdrawn.

Favorable action on the merits of the claims of Group I claims 1-7 and 9-14, in their full scope is therefore respectfully requested.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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